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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

September 15, 1997

VIA HAND DELIVERY

The Honorable Reed E. Hundt
Chairman
Federal Communications Commission
1919 M Street, N.W., Rm. 814
Washington, D.C. 20554

Re: Comment on Broadband C and F Block Rules and Installment Payment Issues
WT Docket No. 97-82; DA 97-679

Ex Parte Presentation

Dear Chairman Hundt:

R&S PCS, Inc. ("R&S") submits this letter to ensure that the relief fashioned by the Federal Communications Commission (the "Commission") for C Block licensees facing financial distress addresses the fundamental issues that prevent C Block licensees from competing in the wireless marketplace. Specifically, the Commission must focus on: (1) relieving licensees of the burdensome ownership restrictions that limit their access to capital; (2) permitting license transfers to non-designated entities; (3) eliminating the rules that give current effect to options; and (4) adopting an amnesty program that does not penalize C Block licensees or impair investments in C Block businesses. These issues must be addressed in lieu of re-auction or other actions that would reconstitute C block entities under existing, unworkable, rules.

I. **The Commission Should Use Its Waiver Authority to Permit Necessary Changes in the Transfer and Ownership Rules of the C Block.**

The Commission's principal objective in seeking to provide relief to C Block licensees should be to encourage the additional needed investment in C Block PCS licensees. As stated in R&S comments,^{1/} it is critical that the Commission waive the application of restrictive ownership rules, including limitations on the use of warrants and options, to increase the potential for third-

^{1/} See Comments of R & S PCS, Inc., WT Docket No. 97-82 (filed June 24, 1997); Reply Comments of R & S PCS, Inc., WT Docket No. 97-82 (filed July 8, 1997).

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party investment in C Block entities. The Commission must also waive the control group, outside investor and spectrum aggregation limitations that prevent the formation of flexible and efficient C Block ownership structures. To the extent that such waivers are to be issued on a case-by-case basis, the Commission should adopt rules for expedited processing, with a presumption that such waivers serve the public interest. Without such relief, C Block licensees will remain unable to obtain the capital, especially the equity, required to fund their businesses, build their systems and provide service to the public.^{2/}

It also is imperative that the Commission's relief promote direct *market-based* solutions to the difficulties facing small business license holders. As the history of the non-wireline cellular industry reveals, market forces can work to bring talent, spectrum and capital together. Just as the Commission's rules permitted essentially unfettered aggregation of cellular markets, the Commission must now allow secondary market transactions to ensure that C Block spectrum is utilized.^{3/} C Block bidders should be relieved of costly restrictions placed on license transfers to non-designated entities. Moreover, the companies best equipped to co-venture with C Block licensees should be permitted to hold *non-controlling* interests in PCS businesses, notwithstanding the specific level of their *de jure* ownership.

Through the issuance of waivers, on an expedited basis, that address the *fundamental* problems facing small business PCS entities, the Commission can relieve C Block licensees of the dire effects of overly-restrictive PCS rules. The Commission has on numerous occasions

^{2/} Logic suggests and experience now shows that C Block businesses will not be as attractive CMRS investments as AirTouch, for example, and that a C Block licensee's cost of capital will be substantially higher. The higher cost of capital and restrictive ownership rules have for practical purposes made the price of participation in C Block entities prohibitive.

^{3/} Indeed, following the cellular lotteries in the 1980s, license transfers, consolidations and settlements of MSA/RSA markets resulted in the creation of partial, non-controlling ownership interests in cellular licenses that were essential to the emergence of a financially sound, more competitive cellular industry. The freedom non-wireline cellular licensees possessed to strike prudent arrangements allowed them to develop quickly. The Commission must allow C Block licensees the same freedom and flexibility that is possessed by their competitors for capital and customers. There is reason to believe that a re-auction may be an inefficient allocation mechanism at this stage in the development of the C block. The difficulties faced by licensees are not ones of start-up capital. Instead, they relate to creating an environment favoring *additional* investment.

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adopted policies that adapt its rules to new circumstances. Granting rule waivers that increase licensee flexibility with respect to ownership, operation and alienability when Commission licenses are in financial distress serves the public interest.^{4/}

II. Any Amnesty Proposal Must Present Viable Alternatives

In addition to the above waiver measures, the Commission also should provide alternatives that do not penalize investors and allow licensees to exit the business. Any C-Block amnesty license return framework ultimately must be more attractive to C Block licenses and their investors than declaring bankruptcy and potentially tying up C Block licenses for years to come.

To be meaningful, any amnesty option must recognize the value of payments already made to the Commission. These payments should be refunded to C-block licenses in the form of (1) cash refunds or (2) FCC auction bidding credits that are transferable to any party who participates in future FCC auctions. The Commission should allow parties to securitize and transfer these bidding interests to the account of other bidders in future auctions in order to maximize the value of such credits in the market and future FCC auctions. Unless C Block investors are able to preserve the value of their investments, or are given an opportunity to recoup a significant portion of the upfront monies, they will not likely support the amnesty option. In addition, it is crucial that a sufficient amount of time be afforded to C Block licensees, prior to the amnesty window's close, to explore transfer opportunities, which may allow the Commission to avoid the expense and time of re-auctioning the spectrum.

^{4/} See e.g. 47 C.F.R § 73.3555 Note 7 ("The Commission will look favorably on waiver applications that involve "failed" broadcast stations); *Network Properties of America, Ltd.*, 10 Commission Rcd 12413 (1995) (waiving one-to-a-market rule to enable applicant to acquire an AM radio station experiencing "on-going financial difficulties"); *1310, Inc.*, 10 Commission Rcd 7228 (1995) (waiving one-to-a-market rule when applicant claimed AM station "will soon be insolvent unless proposed combination is permitted"); *Voice of the Caverns, Inc.*, 4 Commission 2d 946 (1966) (waiving holding period as applied to broadcast station in financial distress); see also 47 C.F.R § 76.505(e)(6)(i)(A) and (B) ("The Commission may waive [certain ownership restrictions] . . . if . . . (A) the affected cable operator or local exchange carrier would be subjected to undue economic distress by the enforcement of such provisions [or] (B) the systems or facilities would not be economically viable if such provisions were enforced").

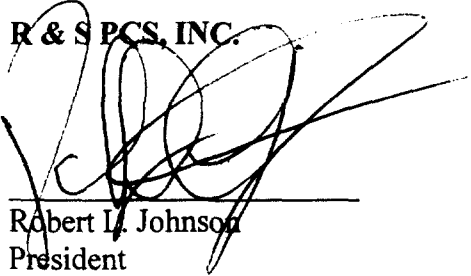
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Some commenters have endorsed rapid, cash re-auctions, contending they offer licensees amnesty. Amnesty plans that penalize C Block licensees and make recoupment on returned licenses dependent on the proceeds from future auctions will add to the uncertainty of the prospects for C Block licensees without resolving fundamental issues that inhibit their development. Moreover, penalizing small business entrepreneurs does not constitute meaningful relief to C Block licensees. Indeed, such plans offer little benefit over traditional bankruptcy proceedings in which the value of the company and its assets, including the PCS license, can be preserved pending a subsequent workout or reorganization. At best, while rapid re-auction may be a viable option for licensees that overbid in the initial C Block auction, it does not provide relief for those licensees that did not overbid and nonetheless face considerable barriers to obtaining additional capital.

The decisions facing the Commission and C Block licensees at this moment are of critical importance. The Commission's statutory mandate is to promote widespread dissemination of licenses. A long-term targeted solution is required. A "quick fix" that merely buys a little time will be harmful. The Commission should adopt expedited waiver procedures to allow small businesses to attract capital and compete with larger players in the wireless marketplace. Further, it should also adopt amnesty procedures that preserve existing investments, do not penalize existing licensees and encourage transfers of on-going businesses to new entities financially capable of building out competitive PCS systems using C Block spectrum.

Respectfully submitted,

R & S PCS, INC.



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President

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